



## **FACTUAL HISTORY**

On March 31, 1993 appellant, then a 33-year-old contract representative, filed a traumatic injury claim alleging that he strained his neck while lifting equipment.<sup>1</sup> The Office accepted the claim for aggravation of preexisting cervical muscle strain. On March 23, 1998 appellant filed an occupational disease claim alleging that his bilateral carpal tunnel syndrome was employment related.<sup>2</sup> The Office accepted bilateral carpal tunnel syndrome and authorized surgery, which was performed on June 16, 1998. On June 25, 1998 appellant filed an occupational disease claim alleging that his pinched nerve condition was employment related.<sup>3</sup> The Office accepted the claim for permanent aggravation of cervical arthritis. By letter dated December 10, 1999, appellant was placed on the periodic rolls for temporary total disability.

By letters dated February 18 and March 27, 2003, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Oscar F. Sterle, a Board-certified orthopedic surgeon, for a second opinion medical examination. In a report dated May 1, 2003, Dr. Sterle reviewed the medical records and provided findings on physical examination. He stated that appellant's employment-related bilateral carpal tunnel syndrome, aggravation of cervical strain and aggravation of cervical arthritis had resolved. Dr. Sterle found no objective findings of these conditions on physical examination. He concluded that appellant was not totally disabled and was capable of performing his date-of-injury position as a contract representative.

On June 10, 2003 Dr. Hong Shen, appellant's treating Board-certified physiatrist, reviewed Dr. Sterle's May 1, 2003 report and noted his disagreement. He stated that a February 25, 2003 electromyogram (EMG) study showed mild bilateral carpal tunnel syndrome. Dr. Shen found that appellant continued to have residuals of his cervical arthritis and cervical strain based upon his "consistently complaining of neck and shoulder pain." A physical examination revealed diffuse tenderness in the same area.

In a March 4, 2004 supplemental report, Dr. Sterle reviewed the reports of Dr. Shen and the February 25, 2003 EMG study. Dr. Sterle stated, that "[appellant] does not suffer from active disabling residuals" of his accepted bilateral carpal tunnel syndrome.

The Office found a conflict in the medical opinion evidence between Dr. Shen and Dr. Sterle regarding the extent of appellant's residuals and disability for work. By letter dated April 28, 2004, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed to Dr. Kenneth W. Chapman, a Board-certified orthopedic surgeon, for an impartial medical examination.

On August 3, 2004 the Office received Dr. Chapman's undated report. Dr. Chapman reviewed the history of appellant's employment injuries, medical treatment and employment

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<sup>1</sup> This was assigned claim number 09-0376348. On June 21, 1999 the Office combined claim numbers 09-0376348, 09-0446786 and 09- 446792, with the latter claim number as the master file number.

<sup>2</sup> This was assigned claim number 09-0446792.

<sup>3</sup> This was assigned claim number 09-0446786.

background. He reported that appellant showed “significant subjective complaint of cervical radiculopathy and cervical pain” which he found unsupported by objective evidence. On examination, appellant exhibited pain into the left trapezius muscle when turning the lower neck. Dr. Chapman found no reflex loss, motor loss or sensory loss. He concluded that there was “no objective evidence to show that [appellant] is suffering from active disabling residual[s]” of his accepted conditions. Dr. Chapman stated that it was imperative to have tests performed clarifying whether appellant continued to have residuals from his accepted bilateral carpal tunnel syndrome and whether he showed any objective evidence of cervical radiculopathy caused by his cervical strain and an aggravation of the cervical arthritis. Dr. Chapman stated:

“It will be difficult to return [appellant] to any type of work when he claims that just doing Braille brings on his symptoms, but the objective findings on the electrical studies might help clarify this picture. Until that is done, I could not disagree with the opinion of Dr. Shen that [appellant] could start working two hours per day three days [a] week.

“My opinion is that, even with that limited amount of work [appellant] is going to continue to complain of increasing symptoms in his neck, shoulders and arms. I believe that, unless [appellant] has a major change in his personality you will never return him to any gainful employment.”

In an October 13, 2004 EMG report, Dr. Arthur Dick, a Board-certified neurologist, found no significant medial or ulnar nerve entrapments, cervical radiculopathy or neuropathy.

In an October 18, 2004 supplemental report, Dr. Chapman reviewed an October 13, 2004 EMG study and reiterated the findings from his prior report. Based upon this study and findings on physical examination, he concluded that appellant’s accepted conditions had resolved. Dr. Chapman noted that the October 13, 2004 studies showed no evidence of any objective changes. He stated:

“However, the electrical studies taken on October 13, 2004 do not show any evidence of objective change in either the nerves at their nerve roots in the neck or in compression studies in the hand. I would have to state, therefore, with a reasonable degree of medical certainty that [appellant] has no objective evidence of continuing symptoms of an aggravation of cervical strain, aggravation of cervical arthritis or aggravation of an underlying compression in the arms.”

By letter dated March 16, 2006, the Office issued a notice of proposed termination of appellant’s compensation based on the impartial medical opinion of Dr. Chapman. The Office provided 30 days for appellant to respond.

In a letter dated April 6, 2006, appellant disagreed with the proposed termination. He contended that the termination was based on stale medical evidence as nothing had been updated since October 2004. Appellant also alleged that he continued to be totally disabled and that his ability to travel has been severely curtailed as a result of his injuries.

In a decision dated April 24, 2006, the Office terminated appellant’s compensation benefits effective that date based on Dr. Chapman’s impartial medical opinion.

Subsequently, the Office received a March 8, 2006 treatment notes from Dr. Shen diagnosing degenerative disc disease, cervical strain and joint arthropathy.

On May 8, 2006 appellant requested an oral hearing which was held on October 4, 2006.

On May 30, 2006 the Office received treatment notes dated November 23, 2005 and May 24, 2006. On November 23, 2005 Dr. Shen diagnosed degenerative disc disease, cervical strain and joint arthropathy. In a May 24, 2006 report, he diagnosed left lower back pain which he thought was “very likely musculoskeletal in nature.”

In a decision dated November 20, 2006, a hearing representative affirmed the April 25, 2006 decision. The hearing representative accorded special weight to Dr. Chapman’s August 3 and October 18, 2004 medical reports as an impartial medical specialist.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits.<sup>4</sup> After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>7</sup>

Section 8123(a) of the Federal Employees’ Compensation Act provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”<sup>8</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.<sup>9</sup>

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<sup>4</sup> *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>5</sup> *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>6</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

<sup>7</sup> *James F. Weikel*, 54 ECAB 660 (2003).

<sup>8</sup> 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>9</sup> *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

## ANALYSIS -- ISSUE 1

The Board notes that a conflict in the medical opinion evidence arose between Dr. Shen, an attending Board-certified physiatrist, and Dr. Sterle, an Office referral Board-certified orthopedic surgeon, as to whether appellant had any continuing residuals or disability causally related to his accepted aggravation of cervical arthritis, aggravation of cervical spine and bilateral carpal tunnel syndrome. The Office accepted appellant's claim for aggravation of preexisting cervical muscle strain, bilateral carpal tunnel syndrome and permanent aggravation of cervical arthritis. Dr. Shen opined that appellant continued to have residuals and disability due to the accepted employment-related conditions. Dr. Sterle opined that the accepted employment-related conditions had resolved and appellant was capable of working his date-of-injury position.

The Office referred appellant to Dr. Chapman, selected as the impartial medical specialist. Dr. Chapman noted essentially normal findings with regard to appellant's cervical spine, wrists and hands. He opined that the bilateral carpal tunnel syndrome, aggravation of cervical strain and aggravation of cervical arthritis had resolved. Dr. Chapman noted that there was no objective evidence to show that appellant was experiencing any active disabling residuals. However, he stated that it was imperative to have diagnostic testing performed to clarify whether appellant continued to have residuals from his accepted employment injuries. In an October 18, 2004 supplemental report, Dr. Chapman review an October 13, 2004 EMG report. Based on the physical findings he stated that appellant's accepted conditions had resolved. In support of this conclusion, Dr. Chapman noted the October 13, 2004 studies showed no evidence of any objective changes and there was no evidence to support any continuing aggravation of cervical arthritis, aggravation of the cervical spine or bilateral carpal tunnel syndrome.

The Board finds that Dr. Chapman's opinion is based on a proper factual and medical background and is entitled to special weight. He found that appellant no longer had any residuals or disability causally related to the accepted employment injuries or aggravation of preexisting cervical muscle strain, bilateral carpal tunnel syndrome and permanent aggravation of cervical arthritis. Dr. Chapman's conclusion is supported by a thorough examination, objective evidence and rationale. Contrary to appellant's contention to the Office, Dr. Chapman's report is not stale. His most recent report was issued on October 18, 2004 and the Office terminated benefits in an April 24, 2006 decision. The Board has held that reasonably current medical evidence is generally less than two years.<sup>10</sup> Dr. Chapman's report was based on a thorough physical examination as well as objective diagnostic testing. Thus, it is relevant and probative evidence of appellant's condition at the time the Office issued its decision terminating his compensation. The only medical report submitted after Dr. Chapman's examination was a direct note from Dr. Shen dated January 11, 2006 which listed appellant's treatment for cervical sprain. For these reasons, his report constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist and the Office has, therefore, met its burden of proof in terminating appellant's compensation benefits based on this report.

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<sup>10</sup> See *Keith Hanselman*, 42 ECAB 680 (1991).

## LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant.<sup>11</sup> In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors.<sup>12</sup> The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>13</sup>

## ANALYSIS -- ISSUE 2

Subsequent to the Office's termination of benefits, appellant maintained that his condition had not resolved and submitted several treatment reports from Dr. Shen who diagnosed left lower back pain, diagnosed degenerative disc disease, cervical strain and joint arthropathy. As noted, it was Dr. Shen's opinion which gave rise to the conflict in medical opinion. His subsequent reports noted physical findings and presented a new diagnosis of left lower back pain. However, as Dr. Shen was on one side of the conflict resolved by Dr. Chapman and he did not present new findings or rationale to support his opinion, their latter reports do not overcome or create a new conflict with Dr. Chapman's impartial medical opinion that the work-related conditions have resolved and that appellant could return to work.<sup>14</sup>

## CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective April 24, 2006 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related injuries. The Board further finds that appellant has failed to establish that he had any continuing employment-related residuals or disability after April 24, 2006.

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<sup>11</sup> See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

<sup>12</sup> *Juanita Pitts*, 56 ECAB \_\_\_\_ (Docket No. 04-1527, issued October 28, 2004).

<sup>13</sup> *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>14</sup> See *Kathryn E. Demarsh*, 56 ECAB \_\_\_\_ (Docket No. 05-269, issued August 18, 2005; *Jaja K. Asaramo*, 55 ECAB 200 (2004) (submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 20, 2006 is affirmed.

Issued: September 18, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board